

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice Published July 26, 2002]

NOTICE OF PROPOSED RULEMAKING

Archeological Rules -2002

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following section of Title 14 of the California Code of Regulations (14 CCR):

§ 895.1 Definitions.

§§ 929.1 [949.1, 969.1] Plan, and Emergency Notice Preparation.

§§ 929.2 [949.2, 969.2] Protection Measures for THPs and Emergency Notices 3 Acres and Larger.

§§ 929.3 [949.3, 969.3] Post Review Site Discovery.

§§ 929.4, [949.4, 969.4] Archaeological Training Requirements.

§§ 929.5, [949.5, 969.5] Site Recording.

§§ 1037.5(a) Review Teams to be Establish.

§§ 1052 Emergency Notice.

PUBLIC HEARING

The Board will hold a public hearing starting at 9:00 A.M., on Thursday, September 12, 2002, at the Radisson Hotel, 300 South Court, Visalia, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M.,

on Monday, September 9, 2002. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: James L. Mote
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551, 4551.5, 4552 and 4553 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513, 4582(f) and 4592 of the Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing statute 4582(f) of the Public Resources Code (PRC) requires a timber harvest plan contain special provisions to protect any unique area within the area of timber operations. Existing statute 21002 states that the Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the

procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

Existing regulations contained in 14CCR § 895.1 provide definitions that must be used in the rules to convey clear meaning to the regulated public. This rulemaking proposes to clarify several definitions and establish others that will be used in preparing the Confidential Archeological Addendum (CAA) that is attached to a timber harvest plan (plan). The rulemaking further proposes to remove from regulation the Confidential Archeological Addendum form because it merely serves as an attachment to a timber harvest plan and the required information is found in other sections of the regulations. The CAA form will still be available from the Department of Forestry and Fire Protection (Department) for use by the regulated public but the information will not have to be presented on that particular form. This regulation change should have no adverse effect on the regulated public.

Existing regulations contained in §§ 929 [949, 969] through 929.7 [949.7, 969.7] outlines the requirements needed to protect archeological and historical sites found in the plan area.

Existing regulations contained in 14CCR §§ 929.1 [949.1, 969.1] describes requirements for securing known archeological or historical information, notifications of Native Americans and recording new sites discovered. This rulemaking proposes to clarify the information needed in Native American notifications and transfer the role of providing site information to the Native American Heritage Commission from the RPF to the Department. This regulation change should have no adverse effect on the regulated public in fact transferring the role of providing site information to the Native American Heritage Commission from the RPF to the Department will more than balance the burden placed on the regulated public regarding noticing in this section.

Existing regulations contained in 14CCR §§ 929.2 [949.2, 969.2] describes the requirements for protection of significant archeological and historical sites. This rulemaking proposes to clarify the registered professional forester's and the licensed timber operator's responsibilities in this regard. This regulation change should have no adverse effect on the regulated public.

Existing regulations contained in 14CCR §§ 929.3 [949.3, 969.3] describes requirements when a new site is discovered. This rulemaking proposes to clarify the minimum information the person who discovers the site must provide the Department. This regulation change should have no adverse effect on the regulated public.

Existing regulations contained in 14CCR §§ 929.4 [949.4, 969.4] describes training requirements needed to surveys. Changes are only editorial in nature and will have no adverse effect on the regulated public.

Existing regulations contained in 14CCR §§ 929.5 [949.5, 969.5] describes who is responsible for developing site information. Changes are only clarifying in nature and will have no adverse effect on the regulated public.

Existing regulations contained in 14CCR § 1037.5 with regard to archeology only identifies who the Director of Forestry and Fire Protection may seek archeological advise from when reviewing plans. Changes are editorial in nature and will have no adverse effect on the regulated public. They reflect the new definition proposed.

Existing regulations contained in 14CCR § 1552 with regard to archeology documents what archeology information is required when submitting a emergency notice. Changes are clarifying in nature and will have no adverse effect on the regulated public.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- Significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The Board has made an initial determination that there will be no significant statewide adverse economic impact directly effecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. While parts of this regulation adds some costs to representative private persons and businesses, it eliminates others, which offset the additional costs.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business. While parts of this regulation add some costs to businesses, it eliminates others, which offset the additional costs.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: James L. Mote
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418 or,
(916) 653-8007

The designated backup person in the event Mr. Mote is not available is Daniel Sendek, Executive Officer of the Board of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

James L. Mote
Regulations Coordinator
Board of Forestry and Fire Protection

Jlm 6/19/02
File: Arch 45 Day Notice